

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL MARINO,	:	CIV. NO. 11-CV-6811
PLAINTIFF	:	
	:	
V.	:	
	:	
USHER, ET AL.,	:	
DEFENDANTS	:	

MOTION TO VACATE THIS HONORABLE COURT'S ORDER DATED
NOVEMBER 5, 2014 SINCE AN APPEAL HAS BEEN FILED
ON THE DENIAL OF THE STAY

Samuel C. Stretton, Esquire, on behalf of the Respondent, Francis Malofiy, respectfully requests this Honorable Court vacate its Order dated November 5, 2014 for the following reasons:

1. The Honorable Paul S. Diamond issued an Order dated November 5, 2014 Ordering Francis Malofiy to pay sanctions. A copy of the November 5, 2014 Order is attached and marked as Exhibit "A".
2. The Honorable Paul S. Diamond issued an Order on October 23, 2014 denying a stay pending appeal and ordered Mr. Malofiy to pay sanctions by November 6, 2014.
3. Judge Diamond's Order suggested Mr. Malofiy take an appeal of his Order dated October 23, 2014.
4. Mr. Stretton, on November 4, 2014, filed an appeal to the United States Court of Appeals for the Third Circuit, a copy of which is attached and marked as Exhibit "B".

5. The appeal specifically is on the failure of the Honorable Paul S. Diamond to issue a stay pending the appeal of the sanctions.

6. Based on this appeal, it would appear that Judge Diamond's Order dated November 5, 2014 about paying sanctions is moot since the stay issue has now been appealed to the United States Court of Appeals for the Third Circuit. The appeal was taken specifically at the direction of Judge Diamond in his October 23, 2014 Order.

7. It would be a great hardship for Mr. Malofiy currently to pay monies without an appellate review of the sanctions findings.

WHEREFORE, Francis Malofiy, by his counsel, Samuel C. Stretton, Esquire, respectfully requests this Honorable Court vacate its Order dated November 5, 2014 because an appeal has been filed as to the failure to stay the sanctions.

Respectfully submitted,

s/Samuel C. Stretton

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO VACATE THIS HONORABLE
COURT'S ORDER DATED NOVEMBER 5, 2014 SINCE
AN APPEAL HAS BEEN FILED ON THE DENIAL OF THE STAY

Mr. Stretton, on behalf of Mr. Malofiy, is asking this Honorable Court to vacate its Order dated November 5, 2014. That Order, which is attached and marked as Exhibit "A", orders Mr. Malofiy to pay sanctions by November 6, 2014 and to so notify the Court if he has not complied.

Mr. Malofiy has complied with Judge Diamond's October 23, 2014 Order, which suggested Mr. Malofiy appeal the stay denial. Mr. Malofiy has done that and the Notice of Appeal to the United States Court of Appeals for Third Circuit is attached and marked as Exhibit "B". The matter is presently pending in the United States Court of Appeals for the Third Circuit.

Because there has been an appeal filed on the denial of the stay, it would appear to be premature for Mr. Malofiy to pay or to face sanctions. Mr. Malofiy, therefore, respectfully

requests this Honorable Court vacate its Order pending the resolution of the appeal of the denial of the stay.

Respectfully submitted,

s/Samuel C. Stretton

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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Motion to Vacate of the Respondent, Francis Malofiy, in the captioned matter upon the following persons in the manner indicated below.

Service by First Class Mail addressed as follows:

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Respectfully Submitted,

November 5, 2014
Date

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